

HOUSE BILL No. 1072

DIGEST OF INTRODUCED BILL

Citations Affected: IC 2-5-37; IC 32-25.5.

Synopsis: Homeowners associations. Requires that certain disclosures must be made relating to the sale of property subject to a homeowners association. Provides that certain requirements must be met for a proxy to be valid if used at a meeting of a homeowners association. Establishes an expedited judicial procedure to resolve certain disputes between a member and a homeowners association. Reorganizes certain statutes relating to homeowners associations. Repeals certain statutes that are reorganized. Establishes the homeowners association study committee. Requires the study committee to study homeowners associations in Indiana, including mediation or arbitration of disputes involving homeowners associations and members of homeowners associations. Provides that the law establishing the committee expires January 1, 2016.

Effective: July 1, 2014.

Burton

January 9, 2014, read first time and referred to Committee on Judiciary.



Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

HOUSE BILL No. 1072



A BILL FOR AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 2-5-37 IS ADDED TO THE INDIANA CODE AS
2 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2014]:
4 **Chapter 37. Homeowners Association Study Committee**
5 **Sec. 1. As used in this chapter, "committee" refers to the**
6 **homeowners association study committee established by section 2**
7 **of this chapter.**
8 **Sec. 2. The homeowners association study committee is**
9 **established.**
10 **Sec. 3. The committee consists of the following members:**
11 **(1) Four (4) members of the house appointed by the speaker.**
12 **Not more than two (2) members appointed under this**
13 **subdivision may be members of the same political party.**
14 **(2) Four (4) members of the senate appointed by the president**
15 **pro tempore. Not more than two (2) members appointed**
16 **under this subdivision may be members of the same political**



- 1 party.
- 2 **Sec. 4. The chairman of the legislative council shall appoint the**
- 3 **committee's chair.**
- 4 **Sec. 5. IC 2-5-1.2 applies to the committee.**
- 5 **Sec. 6. The committee shall study homeowners associations in**
- 6 **Indiana, including the use of mediation or arbitration of disputes**
- 7 **involving homeowners associations and members of homeowners**
- 8 **associations.**
- 9 **Sec. 7. This chapter expires January 1, 2016.**
- 10 SECTION 2. IC 32-25.5-1-1, AS AMENDED BY P.L.231-2013,
- 11 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 12 JULY 1, 2014]: Sec. 1. (a) **Except as provided in this article, this**
- 13 **article applies to the following: all homeowners associations.**
- 14 (1) ~~A homeowners association established after June 30, 2009:~~
- 15 (2) ~~A homeowners association established before July 1, 2009:~~
- 16 (A) if a majority of the members of the homeowners
- 17 association elect to be governed by this article; or
- 18 (B) if the number of members required by the homeowners
- 19 association's governing documents elect to be governed by this
- 20 article if a different number of members other than the number
- 21 established in clause (A) is required by the governing
- 22 documents:
- 23 (b) ~~IC 32-25.5-3-8 applies to all homeowners associations:~~
- 24 (c) ~~IC 32-25.5-3-3(g) through IC 32-25.5-3-3(m) apply to all~~
- 25 ~~homeowners associations:~~
- 26 SECTION 3. IC 32-25.5-2.5 IS ADDED TO THE INDIANA CODE
- 27 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 28 JULY 1, 2014]:
- 29 **Chapter 2.5. Disclosures Required Before Sale of Property**
- 30 **Sec. 1. This chapter applies to the sale of property after June 30,**
- 31 **2014.**
- 32 **Sec. 2. As used in this chapter, "property" refers to real**
- 33 **property covered by the governing documents of a homeowners**
- 34 **association.**
- 35 **Sec. 3. As used in this chapter, "purchaser" refers to a person**
- 36 **who purchases property.**
- 37 **Sec. 4. The following must be provided to a purchaser not later**
- 38 **than ten (10) days before the sale of the property closes:**
- 39 (1) **A copy of the governing documents.**
- 40 (2) **A statement indicating whether there are any unpaid liens,**
- 41 **assessments, or other charges of the homeowners association**
- 42 **relating to the property.**



1 **(3) The name and address of each of the following:**

2 **(A) The officers of the homeowners association.**

3 **(B) The members of the board of the homeowners**
4 **association.**

5 **(C) Any person that has a contract with the homeowners**
6 **association to provide any management services for the**
7 **homeowners association.**

8 **(D) Any individual employed by a person described in**
9 **clause (C) who is responsible for the daily management of**
10 **the homeowners association for the person.**

11 SECTION 4. IC 32-25.5-3-0.1 IS ADDED TO THE INDIANA
12 CODE AS A NEW SECTION TO READ AS FOLLOWS
13 [EFFECTIVE JULY 1, 2014]: **Sec. 0.1. Except as otherwise provided**
14 **in this chapter, this chapter applies to the following:**

15 **(1) A homeowners association established after June 30, 2009.**

16 **(2) A homeowners association established before July 1, 2009:**

17 **(A) if a majority of the members of the homeowners**
18 **association elect to be governed by this article; or**

19 **(B) if the number of members required by the homeowners**
20 **association's governing documents elect to be governed by**
21 **this article if a different number of members other than**
22 **the number established in clause (A) is required by the**
23 **governing documents.**

24 SECTION 5. IC 32-25.5-3-3, AS AMENDED BY P.L.231-2013,
25 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
26 JULY 1, 2014]: **Sec. 3. (a) A homeowners association shall prepare an**
27 **annual budget.**

28 **(b) The annual budget must reflect:**

29 **(1) the estimated revenues and expenses for the budget year; and**

30 **(2) the estimated surplus or deficit as of the end of the current**
31 **budget year.**

32 **(c) The homeowners association shall provide each member of the**
33 **homeowners association with:**

34 **(1) a:**

35 **(A) copy of the proposed annual budget; or**

36 **(B) written notice that a copy of the proposed annual budget**
37 **is available upon request at no charge to the member; and**

38 **(2) a written notice of the amount of any increase or decrease in**
39 **a regular annual assessment paid by the members that would**
40 **occur if the proposed annual budget is approved;**

41 **before the homeowners association meeting held under subsection (d).**

42 **(d) Subject to subsection (f), a homeowners association budget must**



1 be approved at a meeting of the homeowners association members by
 2 a majority of the members of the homeowners association in attendance
 3 at a meeting called and conducted in accordance with the requirements
 4 of the homeowners association's governing documents.

5 (e) For purposes of this section, a member of a homeowners
 6 association is considered to be in attendance at a meeting if the
 7 member attends:

8 (1) in person;

9 (2) by proxy; or

10 (3) by any other means allowed under:

11 (A) state law; or

12 (B) the governing documents of the homeowners association.

13 (f) If the number of members of the homeowners association in
 14 attendance at a meeting held under subsection (d) does not constitute
 15 a quorum as defined in the governing documents of the homeowners
 16 association, the board may adopt an annual budget for the homeowners
 17 association for the ensuing year in an amount that does not exceed one
 18 hundred percent (100%) of the amount of the last approved
 19 homeowners association annual budget. However, the board may adopt
 20 an annual budget for the homeowners association for the ensuing year
 21 in an amount that does not exceed one hundred ten percent (110%) of
 22 the amount of the last approved homeowners association annual budget
 23 if the governing documents of the homeowners association allow the
 24 board to adopt an annual budget under this subsection for the ensuing
 25 year in an amount that does not exceed one hundred ten percent
 26 (110%) of the amount of the last approved homeowners association
 27 annual budget.

28 (g) Subject to subsection (k), the financial records, including all
 29 contracts, invoices, bills, receipts, and bank records, of a homeowners
 30 association must be available for inspection by each member of the
 31 homeowners association upon written request. A written request for
 32 inspection must identify with reasonable particularity the information
 33 being requested. A member's ability to inspect records under this
 34 section shall not be unreasonably denied or conditioned upon provision
 35 of an appropriate purpose for the request.

36 (h) If there is a dispute between a homeowner and a homeowners
 37 association, the officers of the homeowners association must make all
 38 communications concerning the dispute available to the homeowner.

39 (i) A homeowners association shall make all communications and
 40 information concerning a lot available to the owner of the lot or a home
 41 on the lot.

42 (j) Notwithstanding subsections (h) and (i), a homeowners



1 association is not required to make:

- 2 (1) communications between the homeowners association and the
 3 legal counsel of the homeowners association; and
 4 (2) other communications or attorney work product prepared in
 5 anticipation of litigation;

6 available to the owner of a lot or home:

7 (k) A homeowners association is not required to make available to
 8 a member for inspection:

- 9 (1) unexecuted contracts;
 10 (2) records regarding contract negotiations;
 11 (3) information regarding an individual member's association
 12 account to a person who is not a named party on the account;
 13 (4) any other information that is prohibited from release under
 14 state or federal law; or
 15 (5) any records that were created more than two (2) years before
 16 the request.

17 (l) Nothing in this chapter:

- 18 (1) abrogates or eliminates provisions in homeowners association
 19 agreements that permit or require additional disclosure or
 20 inspection rights not required by this chapter; or
 21 (2) prevents a homeowners association from agreeing to make
 22 disclosures or to provide inspection rights not required by this
 23 chapter.

24 (m) A homeowners association may not charge a fee for the first
 25 hour required to search for a record in response to a written request
 26 submitted under this chapter. A homeowners association may charge
 27 a search fee for any time that exceeds one (1) hour. The following
 28 provisions apply if a homeowners association charges a search fee:

- 29 (1) The homeowners association shall charge an hourly fee that
 30 does not exceed thirty-five dollars (\$35) per hour.
 31 (2) The homeowners association may charge the fee only for time
 32 that the person making the search actually spends in searching for
 33 the record.
 34 (3) The homeowners association shall prorate the fee to reflect
 35 any search time of less than one (1) hour.
 36 (4) The total amount of the fee charged by the homeowners
 37 association for a search may not exceed two hundred dollars
 38 (\$200).

39 SECTION 6. IC 32-25.5-3-6 IS REPEALED [EFFECTIVE JULY
 40 1, 2014]. Sec. 6: The governing documents must include grievance
 41 resolution procedures that apply to all members of the homeowners
 42 association and the board.



1 SECTION 7. IC 32-25.5-3-8 IS REPEALED [EFFECTIVE JULY
2 1, 2014]. Sec. 8: (a) The attorney general may bring an action against
3 a board or an individual member of a board of a homeowners
4 association if the attorney general finds that:

- 5 (1) the association's funds have been knowingly or intentionally
6 misappropriated or diverted by a board member; or
7 (2) a board member has knowingly or intentionally used the board
8 member's position on the board to commit fraud or a criminal act
9 against the association or the association's members.

10 (b) A court in which an action is brought under this section may do
11 the following:

- 12 (1) Issue an injunction.
13 (2) Order the board member to make restitution to the
14 homeowners association or to a member.
15 (3) Order a board member to be removed from the board.
16 (4) Order a board member to reimburse the state for the
17 reasonable costs of the attorney general's investigation and
18 prosecution of the violation.

19 SECTION 8. IC 32-25.5-3-9 IS ADDED TO THE INDIANA CODE
20 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
21 1, 2014]: **Sec. 9. (a) This section applies to:**

- 22 (1) a proxy given by a member of a homeowners association;
23 and
24 (2) all homeowners associations.

25 (b) A proxy that does not comply with this subsection is void. A
26 proxy must include all of the following:

- 27 (1) The name and address of the member giving the proxy.
28 (2) The name of the individual empowered to exercise the
29 member's proxy.
30 (3) The date on which the proxy is given.
31 (4) The date of the meeting for which the proxy is given. This
32 subdivision does not apply if the proxy is given to cover more
33 than one (1) meeting and the proxy complies with subsection
34 (d).
35 (5) The agenda of the meeting for which the proxy is given.
36 This subdivision does not apply if the proxy is given to cover
37 more than one (1) meeting and the proxy complies with
38 subsection (d).
39 (6) The member's signature.

40 (c) This subsection applies to a proxy that covers only one (1)
41 meeting. A member may state in a proxy that the proxy is limited
42 in its use to specific matters described in the proxy. If a proxy does



1 not state that its use is limited to specific matters, the individual
 2 named to exercise the proxy may use the proxy only for a matter
 3 described on the agenda of the meeting for which the proxy is
 4 given.

5 (d) A member may give a proxy to cover more than one (1)
 6 meeting if the proxy states that it expires on a stated date that may
 7 not be more than one hundred eighty (180) days after the date on
 8 which the proxy is given. If a proxy is given under this subsection,
 9 the proxy may be used only for matters specifically described in the
 10 proxy. A proxy that provides that the proxy may be exercised for
 11 "any matter" or with words indicating that the individual
 12 exercising the proxy has general authority to exercise the proxy
 13 does not comply with this subsection.

14 (e) A proxy, or a copy of the proxy, that is exercised for any
 15 purpose at a meeting must be maintained with the records of the
 16 meeting for the period required by IC 32-25.5-4-5.

17 SECTION 9. IC 32-25.5-4 IS ADDED TO THE INDIANA CODE
 18 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 19 JULY 1, 2014]:

20 **Chapter 4. Homeowners Association Records**

21 **Sec. 1. (a) Subject to section 5 of this chapter, the financial**
 22 **records, including all contracts, invoices, bills, receipts, and bank**
 23 **records, of a homeowners association must be available for**
 24 **inspection by each member of the homeowners association upon**
 25 **written request.**

26 (b) A written request for inspection must identify with
 27 reasonable particularity the information being requested.

28 (c) A member's ability to inspect records under this chapter
 29 may not be unreasonably denied or conditioned upon provision of
 30 an appropriate purpose for the request.

31 **Sec. 2. If there is a dispute between a homeowner and a**
 32 **homeowners association, the officers of the homeowners**
 33 **association shall make all communications concerning the dispute**
 34 **available to the homeowner.**

35 **Sec. 3. A homeowners association shall make all**
 36 **communications and information concerning a lot available to the**
 37 **owner of the lot or a home on the lot.**

38 **Sec. 4. Notwithstanding sections 2 and 3 of this chapter, a**
 39 **homeowners association is not required to make:**

- 40 (1) communications between the homeowners association and
 41 the legal counsel of the homeowners association; and
 42 (2) other communications or attorney work product prepared



1 in anticipation of litigation;
2 available to the owner of a lot or home on the lot.

3 **Sec. 5. A homeowners association is not required to make**
4 **available to a member for inspection:**

- 5 (1) unexecuted contracts;
6 (2) records regarding contract negotiations;
7 (3) information regarding an individual member's association
8 account to a person who is not a named party on the account;
9 (4) any other information that is prohibited from release
10 under Indiana or federal law; or
11 (5) any records that were created more than two (2) years
12 before the request.

13 **Sec. 6. This article does not:**

- 14 (1) abrogate or eliminate provisions in homeowners
15 association agreements that permit or require additional
16 disclosure or inspection rights not required by this article; or
17 (2) prevent a homeowners association from agreeing to make
18 disclosures or to provide inspection rights not required by this
19 article.

20 **Sec. 7. A homeowners association may not charge a fee for the**
21 **first hour required to search for a record in response to a written**
22 **request submitted under this chapter. A homeowners association**
23 **may charge a search fee for any time that exceeds one (1) hour.**
24 **The following provisions apply if a homeowners association**
25 **charges a search fee:**

- 26 (1) The homeowners association shall charge an hourly fee
27 that does not exceed thirty-five dollars (\$35) per hour.
28 (2) The homeowners association may charge the fee only for
29 time that the person making the search actually spends in
30 searching for the record.
31 (3) The homeowners association shall prorate the fee to reflect
32 any search time of less than one (1) hour.
33 (4) The total amount of the fee charged by the homeowners
34 association for a search may not exceed two hundred dollars
35 (\$200).

36 SECTION 10. IC 32-25.5-5 IS ADDED TO THE INDIANA CODE
37 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
38 JULY 1, 2014]:

39 **Chapter 5. Attorney General Actions**

40 **Sec. 1. The attorney general may bring an action against a**
41 **board of a homeowners association or an individual member of a**
42 **board of a homeowners association if the attorney general finds**



1 that any of the following apply:

2 (1) The association's funds have been knowingly or
3 intentionally misappropriated or diverted by a board
4 member.

5 (2) A board member has knowingly or intentionally used the
6 board member's position on the board to commit fraud or a
7 criminal act against the association or the association's
8 members.

9 (3) A proxy was exercised in violation of IC 32-25.5-3-9.

10 (4) A violation of IC 32-25.5-4 has occurred.

11 **Sec. 2. A court in which an action is brought under this chapter**
12 **may do the following:**

13 (1) Issue an injunction.

14 (2) Order the board member to make restitution to the
15 homeowners association or to a member.

16 (3) Order a board member to be removed from the board.

17 (4) Order a board member to reimburse the state for the
18 reasonable costs of the attorney general's investigation and
19 prosecution of the violation.

20 SECTION 11. IC 32-25.5-6 IS ADDED TO THE INDIANA CODE
21 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
22 JULY 1, 2014]:

23 **Chapter 6. Resolution of Disputes Between Homeowners**
24 **Associations and Members**

25 **Sec. 1. (a) This section applies to the following:**

26 (1) A homeowners association established after June 30, 2009.

27 (2) A homeowners association established before July 1, 2009:

28 (A) if a majority of the members of the homeowners
29 association elect to be governed by this article; or

30 (B) if the number of members required by the homeowners
31 association's governing documents elect to be governed by
32 this article if a different number of members other than
33 the number established in clause (A) is required by the
34 governing documents.

35 (b) The governing documents must include grievance resolution
36 procedures that apply to all members of the homeowners
37 association and the board of the homeowners association.

38 **Sec. 2. (a) A small claims court has jurisdiction to grant an**
39 **order under this chapter.**

40 (b) A petition filed under this chapter has precedence over all
41 other cases pending on the docket.

42 **Sec. 3. (a) This section applies if either of the following applies:**



- 1 (1) A member of a homeowners association has complied with
2 a grievance resolution procedure set forth in the governing
3 documents.
4 (2) The governing documents do not have a grievance
5 resolution procedure.
6 (b) A member of a homeowners association may file a petition
7 for an order under this chapter.
8 Sec. 4. (a) A petition for an order under this chapter must
9 include the following:
10 (1) An allegation stating that an act, omission, or threatened
11 act or omission of the homeowners association will cause an
12 injury, loss, or damage to the petitioner.
13 (2) A description of the act, omission, or threatened act or
14 omission.
15 (3) A description of the specific injury, loss, or damage that
16 the petitioner has suffered or will suffer if the act, omission,
17 or threatened act or omission is not remedied.
18 (b) The petition must be sworn to by the petitioner.
19 Sec. 5. If a petition is filed under this chapter, the court shall
20 immediately do the following:
21 (1) Review the petition.
22 (2) Schedule a hearing for not later than thirty (30) days after
23 the petition is filed.
24 Sec. 6. (a) At the hearing, if the court finds probable cause to
25 believe that an act, omission, or a threatened act or omission of the
26 homeowners association has caused or will cause the petitioner to
27 suffer immediate and serious injury, loss, or damage, the court
28 shall issue an order under subsection (b).
29 (b) If the court makes a finding under subsection (a), the court
30 shall make an order that the court considers just under the
31 circumstances, including setting a subsequent hearing at the
32 request of a party to adjudicate related claims between the
33 petitioner and the homeowners association.
34 Sec. 7. (a) If a petition is filed under this chapter, the clerk shall
35 issue a summons to the respondent homeowners association to
36 appear at a hearing. The summons must:
37 (1) give notice of the date, time, and place of the hearing; and
38 (2) inform the respondent that the respondent must appear
39 before the court to answer the petition.
40 (b) The clerk shall serve the respondent with the summons to
41 appear in accordance with Rule 4.1 of the Rules of Trial
42 Procedure.



- 1 **(c) The court may not grant a continuance of the hearing except:**
- 2 **(1) with the agreement of the parties; or**
- 3 **(2) as provided in the Rules of Trial Procedure.**
- 4 **Sec. 8. If the court sets a subsequent hearing under section 6(b)**
- 5 **or 7(c) of this chapter, the court may do the following at the**
- 6 **subsequent hearing:**
- 7 **(1) Determine damages.**
- 8 **(2) Make other orders the court considers just under the**
- 9 **circumstances.**

